

A **CIMB ISLAMIC TRUSTEE BHD v. PENDAFTAR HAKMILIK
NEGERI SELANGOR & ORS**

COURT OF APPEAL, PUTRAJAYA
VERNON ONG LAM KIAT JCA
YEW JEN KIE JCA

B HAS ZANAH MEHAT JCA
[CIVIL APPEAL NO: B-01(NCVC)(W)-67-02-2018]
28 OCTOBER 2021

C **Abstract** – *The Computerised Land Registration System should mirror the ownership of original title as provided under para. 8 of the Fourteenth Schedule of the National Land Code. Where the computerised title is void ab initio, no good title passes in subsequent transaction. In this case, the wrongful act of the land officials in the exercise of their statutory duty deprived the registered proprietor of the ownership to his property. Consequently, the subsequent transaction pertaining to the title was rendered invalid.*

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E **LAND LAW:** *Title – Validity – Land title wrongfully registered in computerised system – Whether computerised title valid – Whether holder of void title could remain on register of title as owner – Whether charge registered on land valid – Whether anyone could gain good title by subsequent transaction on invalid title*

F **LAND LAW:** *Title – Registration – Land title wrongfully registered in computerised system – Whether computerised title valid – Whether registered owner deprived of ownership to property through wrongful act of land officials – Whether there was breach of statutory duty by land officials – Whether action time-barred – Whether land officials could claim immunity from any legal proceedings*

G The subject matter of the present appeal concerned competing claims on the ownership of a double-storey office/shop lot situated on a piece of land ('property') between three parties, namely, (i) the appellant, the trustee of the beneficiaries of the estate of the original owner, one Hussein Noor ('Hussein'); (ii) the third respondent; and (iii) the fifth respondent, the chargee. Hussein bought the property in 1977 from one Hoo Hwang Boon ('Hoo') and, when he passed away in 1985, Hussein's estate was administered by the appellant. A few years after his demise, his family had let out the property. In 1990, Hussein's beneficiaries discovered that the title of the property was missing and, subsequently, a police report was lodged. In 2015, the tenant of the property received a letter, from the third respondent, instructing them to vacate the property. It transpired that (i) the title of the property had been converted from QTR 5371 to HSD 40222, PT 11929 ('HSD 40222') in 2002 as a result of the Computerised Land Registration System ('CLRS') being implemented where Hoo was registered as the

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proprietor instead of Hussein; (ii) Hoo, who had died in 2012, had left a will appointing his son ('fourth respondent') as the executor and trustee and bequeathing the property to his grandson, the third respondent. The third and fourth respondents later discovered that the title for HSD 40222 was missing, reported the loss and made an application to replace the same; (iii) HSD 40222 was replaced with HSD 77602 PT 11929 ('HSD 77602') where the third respondent was registered as the proprietor; (iv) HSD 77602 was transferred from the fourth respondent to the third respondent, making the latter the registered owner of the property; and (v) the third respondent then charged the property to Hong Leong Bank Bhd ('fifth respondent'). The appellant commenced a claim, at the High Court, against: (i) the Registrar of Land Titles of Selangor ('first respondent'); (ii) the Director of the Selangor Land and Mines ('second respondent'); and (iii) the third to fifth respondents. The appellant sought (i) to annul (a) the titles HSD 40222 and HSD 77602; (b) the transfer of the property to the third respondent and the charge created in favour of the fifth respondent; (ii) to declare that Hussein was the lawful owner of the property; (iii) an order that the first and second respondents rectify the registration of the property; and (iv) to injunct the third respondent from initiating an action for vacant possession. The third respondent, in his counterclaim, sought unpaid rentals and payment of rental until the delivery of vacant possession. Dismissing the appellant's claim and allowing the third respondent's counterclaim, the trial judge opined that (i) the appellant's claim was time-barred, pursuant to s. 2(a) of the Public Authorities Protection Act 1948 ('PAPA'), as the appellant's action could have accrued in 2002, but the action was only filed 14 years later; (ii) the first and second respondents were protected against the appellant's action, pursuant to s. 22 of the National Land Code ('NLC'); (iii) the appellant failed to discharge its burden in showing that the first and second respondents had breached their statutory duty; (iv) the third respondent was the legal and lawful owner of the property and he had obtained an indefeasible title over the property under s. 340(1) of the NLC; and (v) the charge was valid and the appellant's claims against the fifth respondent were dismissed. Hence, the present appeal.

Held (allowing appeal)

Per Has Zanah Mehat JCA delivering the judgment of the court:

- (1) This was a case where a registered owner was deprived of the ownership to his property through the wrongful act of the land officials in the exercise of their statutory duty. The ownership of Hussein was supposed to be registered in the CLRS around 2002. The first and second respondents were entrusted with the duty to upkeep and maintain the register of titles but failed to do so, resulting in an unlawful deprivation of the rightful owner to his lawful right to the property. No verification was done by the first respondent's officers with the copy of the original manual title kept at the land office. This was one of the mandatory

- A process that the first respondent must do in order to comply with the mandatory requirement of para. 8(1) of Fourteenth Schedule of the NLC when converting from existing register, in the manual form, to that of the computer-printed register documents of title. In failing to do so, it was a clear case of breach of statutory duty. (para 39)
- B (2) The computerised title, which displayed Hoo's name, was an invalid title. No one could gain a good title by a subsequent transaction on an invalid title. Hence, Hoo could not, by his will, bequeath the property to the third respondent. Hoo's name, as the registered owner in the computerised document of title, was not valid as there was no evidence of dealing between Hussein and Hoo when the computerised title was issued in 2002. The name in the title should remain with Hussein's name at that point of time in the absence of any dealing. (paras 44 & 45)
- C (3) The third respondent, being a holder of a void title, shall have no reason to remain on the register of title as the owner and, therefore, his ownership should be expunged from the register of titles. The charge, registered in favour of the fifth respondent, was also null and void. (para 66)
- D (4) The appellant's action against the first and second respondents was not time-barred under the PAPA as the acts of the first and second respondents, *ie*, registering the title no. HSD 40222 in the name of Hoo instead of Hussein, were *ultra vires* the NLC. The first and second respondents could not rely on the PAPA to claim immunity from any legal proceedings with the plea of limitation. (paras 48 & 51)
- E (5) The burden was on the first and second respondents to prove that they acted in good faith. The first and second respondents failed to discharge such burden. Therefore, they were not entitled to the protection under s. 22 of the NLC. (para 57)
- F (6) The order of the High Court was set aside. The third respondent's counterclaim was dismissed. (paras 66 & 68)
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Case(s) referred to:

- Alfred Templeton & Ors v. Mount Pleasure Corp Sdn Bhd* [1989] 1 CLJ 693; [1989] 1 CLJ (Rep) 219 HC (*refd*)
- CIMB Bank Bhd v. Ambank (M) Bhd & Ors* [2017] 9 CLJ 145 FC (*refd*)
- H *Director of Forests, Sarawak & Anor v. Balare Jabu & Ors And Another Appeal* [2012] 7 CLJ 685 FC (*refd*)
- Leo Leslie Armstrong (Sebagai Presiden Dan Pemegang Jawatan The Young Men's Christian Association Of Kuala Lumpur) (Persatuan Pemuda Kristian Kuala Lumpur) v. Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur (Yang Dahulunya Di Pegang Oleh Majlis Mesyuarat Kerajaan Negeri Selangor)* [2015] 2 CLJ 10 CA (*refd*)
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- Liputan Simfoni Sdn Bhd v. Pembangunan Orkid Desa Sdn Bhd* [2019] 1 CLJ 183 FC (dist) A
- Litus Jau & Anor v. Boustead Pelita Tinjar Sdn Bhd & Ors* [2014] 1 CLJ 880 CA (refd)
- Ng Yee Fong & Anor v. EW Talalla* [1985] 1 LNS 146 FC (refd)
- Ngo Ong Chung & Ors v. Pengarah Tanah Dan Galian Perak Darul Ridzuan* [2013] 1 LNS 146 HC (refd)
- Overseas Realty Sdn Bhd v. Wong Yau Choy & Ors; Tetuan Tay Ibrahim & Partners (Third Party)* [2014] 8 CLJ 107 HC (refd) B
- Pushpaleela R Selvarajah & Anor v. Rajamani Meyappa Chettiar & Other Appeals* [2019] 3 CLJ 441 FC (foll)
- Ranbaxy (Malaysia) Sdn Bhd v. E.I Du Pont Nemours & Co* [2012] 9 CLJ 79 CA (refd)
- See Leong Chye & Anor v. United Overseas Bank Bhd & Another Appeal* [2018] 10 CLJ 1 FC (dist) C
- Shayo (M) Sdn Bhd v. Nurlieda Sidek & Ors* [2013] 1 CLJ 153 HC (refd)
- Tan Chiu Thoo v. Tee Kim Kuay* [1997] 1 CLJ 541 FC (foll)
- Tan Poh Yee v. Tan Boon Thien & Other Appeals* [2017] 3 CLJ 569 CA (refd)
- Tong Soon Tiong & Ors v. FA Securities Sdn Bhd* [2013] 2 CLJ 448 FC (refd)
- Uptown Properties Sdn Bhd v. Pentadbir Tanah Wilayah Persekutuan & Ors* [2012] 3 CLJ 271 HC (refd) D

Legislation referred to:

- Government Proceedings Act 1956, ss. 5, 6
- Limitation Act 1953, ss. 6, 9
- National Land Code, ss. 22, 89, 340(1), (3), Fourteenth Schedule paras. 3(a), 8(1)
- Public Authorities Protection Act 1948, s. 2(a) E

Other source(s) referred to:

- Halsbury's Laws of England*, 4th edn, vol 16, para 1478
- For the appellant - Daniel Siew & Tee Boon Cheong; M/s Tee Boon Cheong & Co
- For the 1st & 2nd respondents - Siti Fatimah Talib & Nurul Husna Lucyia Gelangang; SLO F
- For the 3rd & 4th respondents - Wong Kok Yih; M/s Farid Wong & Wee
- For the 5th respondent - Jack Yow Pit Pin & Melvin Ng Yet Ting; M/s Rahmat Lim & Partners
- [Editor's note: For the High Court judgment, please see *CIMB Islamic Trustee Bhd v. Pendaftar Hakmilik Negeri Selangor & Ors* [2018] 1 LNS 1356 (overruled).] G
- Reported by Najib Tamby

JUDGMENT

Has Zanah Mehat JCA:

Introduction H

[1] The subject matter of this appeal is about the competing claims on the ownership of a double-storey office/shop lot situated on a piece of land presently known as HSD 77602, PT No. 11929, Mukim Batu, Daerah Gombak, Negeri Selangor ("HSD 77602" or "the property") between three parties namely the appellant/plaintiff being the trustee on behalf the beneficiaries of the estate of the original owner one Hussein bin Noor I

A (“Hussein”), the third respondent/third defendant as the current registered proprietor of the land in the computerised land title and the fifth respondent/fifth defendant being the chargee.

[2] In exercise of its trusteeship, the appellant has filed a claim against various parties:

- B (i) the Registrar of Land Titles of Selangor (the first respondent);
(ii) the Director of the Selangor Land and Mines (the second respondent);
(iii) an individual by the name of Hoo Chia Choon (the third respondent),
C the registered landowner in the computerised land title issued by the first and second respondents;
(iv) an individual by the name of Hoo Mooi Hwa (as the executor of the late Hoo Hwang Boon’s will (the fourth respondent); and
D (v) Hong Leong Bank Berhad, the fifth respondent, the lender of a loan granted to the third respondent and also a chargee, as the property was charged in favour of the fifth respondent as a security for the loan granted to the third respondent.

Background Facts

E [3] On 17 January 1977, Hussein bought the property from the late Hoo Hwang Boon, who was then, held under the Qualified Title 5371 Lot 11929, Mukim Batu, Gombak, Selangor (“QTR 5371”). The late Hoo Hwang Boon was the original owner of QTR 5371 before the property was sold to Hussein. Hussein also owned the adjacent lot No. SH 16. Hussein passed away on
F 4 April 1985 and his estate is being administered by the appellant. A few years after his demise, his family moved out and the property and No. SH 16 were let out.

[4] Sometime in 1990, Hussein’s beneficiaries discovered that the title of the property (QTR 5371) was missing. On 1 February 1990, Satiah binti
G Jamal, Hussein’s widow, lodged a police report.

[5] In August 2015, the tenant of the property received a letter dated 10 August 2015 from the solicitors representing the third respondent instructing the tenant to vacate the said property. This prompted PW2 Normah binti Hussein (Hussein’s daughter) to make inquiries at the land
H office. She found out that the title of the property had been converted from QTR 5371 to HSD 40222 PT 11929 (“HSD 40222”) on 16 April 2002 as a result of the Computerised Land Registration System (Sistem Pendaftaran Tanah Berkomputer “SPTB”) being implemented where Hoo Hwang Boon was registered as the proprietor instead of her late father. It was also found
I that on 23 August 2013, the title was replaced with HSD 77602 PT 11929 where the third respondent was registered as the proprietor. A police report was accordingly lodged and a registrar’s caveat was entered.

[6] Apparently, Hoo Hwang Boon, who died on 6 February 2012, had left a will dated 18 November 2011 where he appointed his son, the fourth respondent, as the executor and trustee and he bequeathed the said property to his grandson, the third respondent. The third respondent later discovered that HSD 40222 was missing. The following steps were then taken:

- (i) the third respondent had reported the loss of the same, and an application to replace the lost title of HSD 40222 was subsequently made by him;
- (ii) the fourth respondent being the executor of the late Hoo Hwang Boon's estate, also applied for a replacement of the title HSD 40222; and
- (iii) on 23 August 2013, HSD 77602 was issued as a replacement title for the lost title HSD 40222. The same was gazetted and notified *via* Form 110.

[7] Subsequently, HSD 77602 was then transferred from the fourth respondent (the executor of the late Hoo Hwang Boon's will) to the third respondent being the beneficiaries in the will. The third respondent became the registered owner of the property *vide* a probate granted by the Kuala Lumpur High Court OS No. 32NCVC-522-05-2013 dated 29 May 2013. On the face of HSD 77602, the third respondent is the registered proprietor of HSD 77602 or the property.

[8] On 18 October 2013, the third respondent, had charged the property to the fifth respondent *via* Charge No. 89214/2013 ("the charge"). It was not in dispute that at all material times, the fifth respondent had no knowledge of the purported competing claims by the appellant.

[9] It was not in dispute that:

- (i) there was no further action taken by the appellant as trustee to request for a replacement title for QTR 5371 after the loss was discovered on 1 February 1990;
- (ii) there was no record of any application for replacement title made by Hussein's beneficiaries or the appellant; and
- (iii) on 16 April 2002, QTR 5371 was converted to a new title under HSD 40222 due to the implementation of the computerised registration system at the land office. It was not in dispute that the late Hoo Hwang Boon was registered as the proprietor and owner of property in HSD 40222 and his name appears on the same after the conversion.

At The High Court

[10] At the High Court, the appellant sought *inter alia* to annul the title HSD 40222 PT 11929 issued on 16 April 2002, HSD 77602 PT 11929 issued on 23 August 2013, the transfer of the said property to the third

- A respondent, the charge created in favour of the fifth respondent; to declare that Hussein bin Noor was/is the lawful and legal owner of the said property and the first and second respondent to rectify the registration of the said property; and to injunct the third respondent from initiating an action for vacant possession.
- B [11] The first and second respondents deny any irregularity or breach of any statutory duty and seek protection under s. 22 of the National Land Code (“NLC”). The third and fourth respondents maintain that the said property is legally owned by the third respondent which he inherited from his grandfather. The fifth respondent pleads that, based on the land search, the
- C third respondent is the legal proprietor and the charge created is regular and further states that being a *bona fide* purchaser for value and a subsequent purchaser, the fifth respondent is protected by the proviso of sub-s. (3) of s. 340 of the NLC.
- D [12] The first, second and fifth respondents further plead that the appellant is time-barred in that the cause of action arose in 2002. The first and second defendants rely on sub-s. 2(a) of the Public Authorities Protection Act 1948 (“PAPA”), while the fifth respondent relies on ss. 6 and 9 of the Limitation Act 1953 (“Limitation Act”).
- E [13] The third respondent, in his counterclaim, alleges that the appellant has failed in its duty as an administrator to advise the beneficiaries of the estate of Hussein to deliver vacant possession instead and has proceeded to file an OS No. WA-24NCVC-982-06-2016 to restrain the third respondent from seeking for vacant possession which deprives him from utilising the said property and at the same time has to continue paying monthly instalments to the fifth respondent. He is seeking for damages by way of a counterclaim in the appellant’s suit.
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- G [14] On 25 September 2018, the trial judge found in favour of the first, second, third, fourth and fifth respondents. His Lordship dismissed the appellant’s claim and allowed the third respondent’s counterclaim on the 15 months’ unpaid rental (from August 2015 to October 2016) and payment of rental for a sum of RM6,500 per month until delivery of vacant possession. The appellant was ordered to pay costs of RM15,000 to the first and second respondents jointly, RM15,000 to the third and fourth respondents jointly and RM15,000 to the fifth respondent.
- H [15] The salient findings of the learned trial judge were as follows:
- I (i) the appellant’s claim was time-barred pursuant to s. 2(a) of the PAPA as the appellant’s action could have accrued on 16 April 2002 but the action was only filed on 27 September 2016, 14 years later;

- (ii) the first and second respondents were protected against the appellant's action pursuant to s. 22 of the NLC; A
- (iii) the appellant has failed to discharge its burden in showing that the first and second respondents have breached their statutory duty; and
- (iv) the third respondent is the legal and lawful owner of the said property, and he has obtained an indefeasible title over the property under s. 340(1) of the NLC. Consequently, the charge is valid and the appellant's claims against the fifth respondent were dismissed (paras. 40 and 41, p. 1304 of encl. 5). B
- [16] Several issues arose for our consideration. They are as follows: C
- (i) whether the appellant's suit is barred by limitation;
- (ii) whether the first and second respondents had breached their statutory duty;
- (iii) whether the first and second respondents are protected under s. 22 of the NLC; and D
- (iv) who is the legal and lawful owner of the property.

The Submissions Of The Parties

The Submission Of The Appellant

[17] On the issue of limitation, whether the appellant's claims are barred by s. 2(a) of the PAPA, the appellant's learned counsel submitted that the first and second respondents are not protected under s. 2(a) of the PAPA due to their breach of statutory duty which amounts to an *ultra vires* act. The appellant is relying on this court decision in *Leo Leslie Armstrong (Sebagai Presiden Dan Pemegang Jawatan The Young Men's Christian Association Of Kuala Lumpur) (Persatuan Pemuda Kristian Kuala Lumpur) v. Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur (Yang Dahulunya Di Pegang Oleh Majlis Mesyuarat Kerajaan Negeri Selangor)* [2015] 2 CLJ 10 ("*Leo Leslie Armstrong*"). E

[18] The appellant further submitted that the first and second respondents are also not protected under s. 22 of the NLC because their exercise of power by converting the title to someone who is not the owner is not the power exercisable under and in compliance with the Fourteenth Schedule of the NLC. To warrant the invocation of s. 22 of the NLC, they must show the act done by the first and second respondents were in good faith. F

[19] On the learned judge's findings that the appellant has failed to discharge the burden in showing the first and second respondents have breached their statutory duty, the appellant's case is premised on the first and second respondents' failure to convert title no. QTR 5371 to HSD 40222 in G

- A accordance with the Fourteenth Schedule of the NLC. As the fact reveals, the title HSD 40222 which is a continuation of QTR 5371 has in 2002 registered a proprietor other than the one named in QTR 5371, the burden shifts to the first and second respondents to explain the discrepancy which the latter has failed to discharge. There is no necessity for the appellant to
- B prove why the late Hoo Hwang Boon was not the proprietor. In fact, the third and fourth respondents could offer no evidence of any dealing of the property from Hussein to the late Hoo Hwang Boon. Hence, the calling of the appellant's representatives and Hussein's widow were irrelevant to prove the appellant's case.
- C [20] The appellant also contends that the learned trial judge has erred in taking into account irrelevant considerations such as the failure of the appellant as a trustee to apply for the replacement of the lost title and no explanation by the beneficiaries on the payment of the quit rent and assessment. The appellant further contends that even if the appellant or
- D Hussein's beneficiaries applied for a replacement title from 1990, it is of no relevance. Any replacement title issued in 1990 or thereafter would not prevent or deter entry of the wrong ownership into the Computerised Land Registration System or SPTB by the first and second respondents during the conversion exercise in 2002. This is a case where the mishap happened in
- E the register of titles within the control of the first and second respondents resulting in Hussein's name disappearing from the register of titles, but not a forged or fraudulent transaction whereby Hussein was deprived of ownership of the said property.
- F [21] Therefore, the learned trial judge had erred in taking into consideration of the inaction of the appellant and Hussein's beneficiaries to apply for the replacement title for QTR 5371 and on the issue of payment of the quit rent in arriving at His Lordship's decision as the computerised document of title was issued to a wrong person and not to the same person as stated in the original manual document of title. Consequently, the fifth
- G respondent cannot derive an indefeasible interest over the property out of a void instrument.
- H [22] On the non-attendance of the appellant's representative, Hussein's widow and the tenant of the said property as witnesses, it has no bearing on the outcome of the case since the material facts have been tendered to enable the court to make its findings. Therefore, the learned trial judge had erred in taking into consideration of the inaction of the appellant and Hussein's family members or beneficiaries to apply for the replacement title for QTR 5371 and no explanation for the payment of the quit rent in arriving at His Lordship's decision. On the non-attendance of the above said witnesses, the
- I appellant relies on the decision of Federal Court in *Tong Soon Tiong & Ors v. FA Securities Sdn Bhd* [2013] 2 CLJ 448 and the decision of this court in *Ranbaxy (Malaysia) Sdn Bhd v. E.I. Du Pont Nemours & Co* [2012] 9 CLJ 79

that nothing should be inferred from the absence of the plaintiffs to appear in court as there is no requirement in law for them to personally testify in support of their respective claims and success of any claim depends on the sufficiency of the relevant and admissible evidence made available to the court which may come from various sources.

[23] As regards the issue on indefeasibility of title under s. 340 of NLC in relation to the computerised land titles when there was no fraud involved, the appellant contends that this court is bound by the recent Federal Court decision in *Pushpaleela R Selvarajah & Anor v. Rajamani Meyappa Chettiar & Other Appeals* [2019] 3 CLJ 441 (“*Rajamani*”). The appellant said in *Rajamani*, the Federal Court has endorsed the decision in the earlier cases namely *Shayo (M) Sdn Bhd v. Nurlieda Sidek & Ors* [2013] 1 CLJ 153; [2013] 7 MLJ 755; *Uptown Properties Sdn Bhd v. Pentadbir Tanah Wilayah Persekutuan & Ors* [2012] 3 CLJ 271; [2012] 8 MLJ 713 and *Overseas Realty Sdn Bhd v. Wong Yau Choy & Ors; Tetuan Tay Ibrahim & Partners (Third Party)* [2014] 8 CLJ 107.

The Submission Of The First And Second Respondents

[24] The first and second respondents contend that they acted in good faith when they issued the replacement title in continuation, HSD 77602 PT11929 and recorded in SPTB that the owner is Hoo Hwang Boon. In their written submission, the first and second respondents rely on ss. 5 and 6 of the Government Proceedings Act 1956, the first and second respondents submitted that in the suit for tort against the government’s employee, the appellant should have cited the proper party namely the Government. In this case, it was not done so. However, in the oral submission, the first and second respondents only submitted on limitation issue under s. 2(a) of the PAPA. The first and second respondents submitted that the cause of action had accrued on 16 April 2002 and under PAPA, the appellant must bring an action against the first and second respondents within three years or 36 months from that date. In this case, the action was filed beyond three years or 3,618 months. Therefore, it is a clear case that the appellant’s action is barred by limitation. The first and second respondents are relying on the case of *Litus Jau & Anor v. Boustead Pelita Tinjar Sdn Bhd & Ors* [2014] 1 CLJ 880. The first and second respondents also relied on s. 89 of the NLC on the conclusiveness of the third respondent’s title and s. 22 of the NLC which gives them the absolute protection from civil action for any act done or omitted to be done in the intended exercise or performance of any power in good faith. In order for s. 22 of the NLC not to be inoperative, the appellant must show proof that the first and second respondents acted *mala fide*.

A *The Submission Of The Third And Fourth Respondents*

[25] The third and fourth respondents are also relying on s. 89 of the NLC that every register document of title shall be conclusive evidence of the proprietorship. In the absence of fraud, the learned trial judge has no other option unless to conclude that the property is owned by the third respondent.

B Further, to compound the matter, no witness from the appellant was called to prove otherwise. The third and fourth respondents supported the conclusion by the trial judge that the first and second respondents are protected by s. 22 of the NLC. On the counterclaim, there is nothing to suggest that the third respondent is not the owner of the said property.

C Therefore, the learned judge was correct in holding that the third respondent's title is indefeasible and thereby the third respondent has been deprived of the use of the property. Consequently, the counterclaim is rightly allowed by the trial judge and it follows that the claim against the fifth respondent is dismissed as a matter of course.

D *The Submission Of The Fifth Respondent*

[26] It was submitted on behalf of the fifth respondent that the fifth respondent has taken all ordinary precautions available and had exercised reasonable due diligence in ascertaining that the third respondent is the registered owner. Hence, the fifth respondent had acted in good faith. The contention of the fifth respondent is supported by the following facts:

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- (i) the respondent's Senior Manager in the Credit Evaluation Department at that material time had sighted the photocopy of HSD 77602, when evaluating the third respondent's credit standing. Presently, the original copy of HSD 77602, is held by D5 (see the witness statement of Loo Thiam Keong, Q&A 6);
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- (ii) in the original copy of the HSD 77602 at pp. 1034 to 1035 of encl. 4, the third respondent's name is on the face of the title, and the fifth respondent is entitled to rely on this information to be conclusive upon sighting of the original;
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- (iii) up until the approval of the loan to the third respondent, and the registration of the charge on 18 October 2013, the fifth respondent had no knowledge of the appellant's or the late Hussein's beneficiaries's claims against the property; (see Q&A 7 of DWS5 and Q&A 15 of DWS6 witness statement);
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- (iv) at all times, the third respondent has also never informed the fifth respondent about Hussein's trustee or beneficiaries's competing claims against the property;

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(v) in any event, at the time the charge was registered, there is nothing in the evidence to show that the fifth respondent was informed of the appellant's claims on or before the registration of the charge on 18 October 2015; and A

(vi) furthermore, as of 21 October 2013, the fifth respondent had also procured a valuation report by TD Azis Sdn. Bhd dated 8 October 2013, which stated that the registered owner of HSD 77602 is the third respondent. B

[27] Learned counsel for the fifth respondent submitted in reliance of the Federal Court decision in *CIMB Bank Bhd v. Ambank (M) Bhd & Ors* [2017] 9 CLJ 145; [2017] 5 MLJ 142, it is settled law that the chargee is recognised as the subsequent purchaser under the proviso to sub-s. (3) of s. 340 of NLC. The fifth respondent is a *bona fide* purchaser under the proviso of sub-s. (3) of s. 340 NLC, as evidence, the fifth respondent had done two searches before the disbursement of the loan. Based on the search, on the face of the title, the third respondent's name is on the title, no caveat and the Hussien's name or interest is also not on the title. Learned counsel submitted that *Rajamani (supra)* affirmed the position of a *bona fide* purchaser for value. Hence, the title of the fifth respondent is indefeasible based on the principle of deferred indefeasibility. In *Rajamani (supra)*, even though the original owner is still holding the original title, the court favours the subsequent purchaser for value in good faith. The status of the fifth respondent is similar to the first defendant in *Rajamani (supra)*. Learned counsel also referred to *Liputan Simfoni Sdn Bhd v. Pembangunan Orkid Desa Sdn Bhd* [2019] 1 CLJ 183; *See Leong Chye & Anor v. United Overseas Bank Bhd & Another Appeal* [2018] 10 CLJ 1. C D E F

[28] On the limitation issue, learned counsel for the fifth respondent also submitted that the appellant's claims against the third and fifth respondents are barred by limitation under ss. 6 and 9 of the Limitation Act. Whereas the claims against first and second respondents are barred under s. 2 of PAPA. The section envisaged on default of any written law. Therefore, it should not be subject to any qualification as decided by this court in *Leo Leslie Armstrong (supra)*. Further, based on the facts of *Leo Leslie Armstrong (supra)* are only confined to the special fact of that case. There is a case in support of the fifth respondent's position namely; *Litus Jau & Anor v. Boustead Pelita Tinjar Sdn Bhd & Ors* [2014] 1 CLJ 880. In *Litus Yau*, Raus Shariff JCA (as he then was) stated that the plaintiffs' cause of action against the second and third defendants accrued after the issuance of the provisional lease in 1992. Given this scenario and premised on the 36 months limitation provided under s. 2(a) of PAPA, there can be no doubt that the plaintiffs' action against the defendant is time-barred. G H I

- A [29] Further, there was an inordinate delay of action taken by the appellant, it was a long delay of 14 years. The appellant asked for various declaratory reliefs, which are equitable reliefs, therefore, the appellant must explain the delay, if not, the court ought not to assist the appellant. The appellant did not give any evidence on the delay. No evidence was
B forthcoming from the appellant as a trustee to explain the delay. The appellant had slept on their rights.

Our Analysis And Decision

- C [30] We have considered the submissions of the parties both oral and written. We, unanimously, allowed the appellant's appeal and reversed the High Court's decision in dismissing the appellant's claim and in allowing the third defendant's counterclaim. We now give our reasons.

Whether There Was A Breach Of Statutory Duty By The First & Second Respondents

- D [31] The appellant's case is premised on the first and second respondent's failure to convert title no. QTR 5371 to HSD 40222 in accordance with the Fourteenth Schedule of the NLC. As the facts reveal that the title HSD 40222 which is a continuation of QTR 5371 had in 2002 registered a proprietor other than the one named in QTR 5371. The burden shifted to the first and
E second respondents to explain the discrepancy which they failed to do. The trial judge found that Hussein was the registered owner of the said property under QTR 5371 by virtue of a transfer taking place on 17 January 1977. However, the trial judge accepted the fact that the late Hoo Hwang Boon was the registered proprietor of the said property upon issuance of the
F computerised title HSD 4022, which was subsequently replaced by title no. 77602 and later transferred to the third respondent in accordance with the grant of probate obtained by the fourth respondent as an executor of the will of the late Hoo Hwang Boon. Relying on s. 89 of the NLC, the trial judge concluded that the said property is owned by the third respondent. At
G para. [31] of the judgment, His Lordship stated the following:

[31] There is no allegation of fraud or forgery here hence, relying again on section 89 of the NLC, I have no other option but to conclude that the said property is owned by the 3rd defendant. And to compound the matter no witness was called by the plaintiff to prove otherwise.

- H [32] Section 89 of the NLC provides the following:

89 Conclusiveness of register documents of title

Every register document of title duly registered under this Chapter shall, **subject to the provisions of this Act, be conclusive evidence:**

- I (a) that title to the land described therein is vested in the person or body for the time being named therein as proprietor; and

- (b) of the conditions, restrictions in interest and other provisions subject to which the land is for the time being held by that person or body, so far as the same are required by any provision of this Act to be specified or referred to in that document. (emphasis added)

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[33] We find that the trial judge had read and applied s. 89 of the NLC in isolation. It must be borne in mind that it is an accepted canon of construction that a statute must be read as a whole and with reference to other clauses and schemes of the statute overall. Section 89 clearly envisaged this principle when it is enacted with the phrase “shall, subject to the provisions of this Act, ...”. In this regard, in our view, it shall be read subject to s. 5A and para. 8(1) of the Fourteenth Schedule of the NLC. Subsection (3) of s. 5A which empowers the application of the Fourteenth Schedule provides the following:

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5A Coming into force of the Computerized Land Registration System in any land Registry

- (3) Upon the coming into force of the Computerized Land Registration System in any land Registry:

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(a) the provisions of the Fourteenth Schedule shall apply; and

(b) the provisions of this Act insofar as they relate to the forms of documents of title, the procedure for the preparation and registration of any document of title, any dealing in land and any entry or endorsement of any note, memorial or memorandum or any correction or cancellation thereof on any document of title shall be read with the modifications, amendments, additions, deletions, substitutions or adaptations as provided in the Fourteenth Schedule.

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[34] It is mandatory that the provisions found in the Fourteenth Schedule be strictly adhered to during the computerisation of the land registration system as the word “shall” is used in para. 3(a).

[35] Paragraph 8(1) of the Fourteenth Schedule provides for the process of conversion from the manual title to the computerised title. Paragraph 8(1) provides the following:

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8. Conversion to computer register document of title

- (1) Upon the coming into force of the Computerized Land Registration System in a land Registry, **the Registrar shall convert the existing register documents of title to the computer printed register documents of title** and shall sign and seal the same. (emphasis added)

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[36] In this case, after the conversion was done, the first and second respondents had endorsed on the existing manual title the confirmation “TELAH DIBUAT ENTRY”. Effectively, it means the ownership data of the existing manual title had been entered into the computerised system. The effect of this phrase has been confirmed by the officers of the first and second

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- A respondents (DW1 and DW2). The words “shall convert” are found in para. 8(1) of the Fourteenth Schedule and the confirmation of entry of the said data into the system can only be interpreted that the ownership details in the computerised title would reflect what is in the manual title. It follows that the original manual title bearing the name of Hussein must be mirrored in the computerised title, then the computerised title must mirror it. But it was not so. Instead, the name of Hoo Hwang Boon was displayed in the computerised title. No one could explain this discrepancy.

- [37] We find that the learned trial judge has failed to appreciate the provision of para. 8(1) of the Fourteenth Schedule and gave weight to the endorsement made on the face of the manual title which purportedly confirmed that ownership data in the existing manual title had been entered into the computerised system. The learned trial judge should have concluded that since the name of Hoo Hwang Boon in the computerised title did not reflect Hussein as the owner, as it is in the original manual title, the computerised title is a void *ab initio* title.

- [38] It is not relevant even if the appellant’s failure to apply for the replacement of the original title (QTR 5371) when it was reported lost in 1991 and failure to offer explanation about payment of quit rent and assessment of the said property. The learned trial judge had erred in taking into consideration when coming to His Lordship’s decision on the issue of ownership when repeatedly pointed out the appellant’s failure to apply for the replacement of the original title (QTR 5371) when it was reported lost in 1991 and failure to offer explanation about payment of quit rent and assessment of the said property.

- [39] This is a case where a registered owner is deprived of the ownership to his property through the wrongful act of the land officials in the exercise of their statutory duty. The ownership of Hussein was supposed to be registered in the computerised title but not so registered upon implementation of the Computerised Land Registration System around 2002. The first and second respondents are entrusted with the duty to upkeep and maintain the register of titles but had failed to do so, in this instant case, resulting in an unlawful deprivation of the rightful owner his lawful right to the property. As found by the learned trial judge, based on evidence, it was not disputed that no verification was done by the first respondent’s officers with the copy of the manual title QTR 5371 kept at the land office strong room. In our view, this is one of the mandatory process that the first respondent must do in order to comply with the mandatory requirement of para. 8(1) when converting from the existing register in the manual form to that of the computer printed register documents of title. In failing to do that, it is a clear case of breach of statutory duty.

[40] We find the learned trial judge was plainly wrong in coming to the finding that the appellant had not proved on the balance of probabilities that the first and second respondents had committed a breach of their statutory duty. The duty of the first and second respondents in the implementation of the Computerised Land Registration System or STPB is to convert the existing QTR 5371 to a computer printed document of title which naturally shall mirror the ownership endorsement as in QTR 5371 as provided under para. 8 of the Fourteenth Schedule of the NLC.

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[41] At the trial, PW1 has testified that based on the title no. QTR 5371, the registered proprietor was Hussein and his name “Hussein bin Nor” should have been taken to be registered in the title no. HSD 40222. DW1 and DW2 in their cross-examination have also agreed that based on the document of title QTR 5371, Hussein was the registered proprietor. However, none of the aforesaid three witnesses were able to explain why Hoo Hwang Boon’s name was taken to be registered in the computerised title no. HSD 40222 in 2002.

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[42] The trial judge has accepted the evidence that on 16 April 2002, when the first computer-printed register document of title was issued, the registered proprietor was Hoo Hwang Boon instead of Hussein bin Nor. In the grounds of judgment, the trial judge has taken note of the evidence as follows:

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[32] ... PW1 admitted that when PW2 came to see him **he checked both QTR 5371 and HSD 40222 and found that two different persons owned the said property.**

[35] As I have said earlier no one knew what happened between 1977 and 2002 or at least until 1985 when Hussein bin Noor died. There is only one QTR 5371. According to the land officials between 1977 after Hussein was registered as the proprietor until 2002 there was no transaction recorded and they cannot explain the change in the registered ownership. **If they obtained the details during the conversion from QTR 5371, then Hussein’s name should be appearing in HSD 40222. However, it was Hoo Hwang Boon’s name appeared as the registered owner instead when the conversion took place ...** (emphasis added)

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[43] If His Lordship had properly directed his mind to the above-mentioned portion of his judgment (“two different persons owned the said property” and “Hussein’s name should be appearing in HSD 40222”), His Lordship would have come to the conclusion that the first and second respondents have breached their statutory duty under the Fourteenth Schedule of the NLC.

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[44] Since the computerised title is void *ab initio*, no one can derive a good title from it. The computerised title which displayed the name of Hoo Hwang Boon is an invalid title. No one can gain a good title by subsequent transaction on an invalid title. Hence, the late Hoo Hwang Boon cannot by

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- A his will bequeath the said property to the third respondent. Consequently, the fifth respondent also holds a charge on an invalid title. In the case of *Tan Chiw Thoo v. Tee Kim Kuay* [1997] 1 CLJ 541 which concerned a single piece of land for which two documents of title were issued. The respondent was issued with a document of title registered in September 1968 whilst the
- B appellant was issued with another document of title registered in December 1972. As it transpired, the respondent issued a writ against the appellant claiming vacant possession and damages for loss of income. The trial judge allowed the respondent's claim on account that his title prevailed over that of the appellant as it was registered earlier. Peh Swee Chin FCJ (delivering
- C the judgment of the court) affirmed this part of the judgment of the learned High Court Judge that the indefeasibility of the title of the respondent could not be challenged. The document of title of the appellant was void against the respondent. Alternatively, the appellant's document of title was also void because the said land could not be alienated by the state authority as it was no longer state land. The purported alienation of the said land to the
- D appellant was a nullity and his title would not be protected and not indefeasible under s. 340 of the NLC.

- [45] Similarly, in our present case, the late Hoo Hwang Boon's name as the registered owner in the computerised document of title is not valid as there was no evidence of dealing between Hussein and the late Hoo Hwang Boon
- E when the computerised title was issued in 2002. The name in the title should remain with Hussein's name at that point of time in the absence of any dealing.

Whether The Appellant's Action Is Barred By Limitation

- F [46] The learned trial judge opined that the appellant should have filed an action against all the respondents at the earliest time on 16 April 2002 when HSD 40222 was issued. However, no further action was taken by Hussein's beneficiaries except PW2 handed over the police report to the appellant. However, the appellant did nothing. Based on this, His Lordship found in
- G favour of the respondents and His Lordship stated that the appellant as an administrator did not bother to make any inquiry, therefore, the appellant's claim is time-barred as against the first and second respondents under PAPA. His Lordship further stated that the claims against the third respondent and the fifth respondent, the bank was also time-barred. The reasons being that:
- H (i) the appellant or Hussein's beneficiaries failed to apply for replacement title;
- (ii) no explanation offered as to the inaction;
- (iii) the appellant and Hussein's family members did not attempt to find out
- I and the appellant made no attempt to find out;

- (iv) as an administrator of Hussein's estate, the appellant should apply for the replacement title. However, this was not done; and A
- (v) the appellant also failed to call witnesses from the trustees to explain why they did not take further action for the last years.

[47] His Lordship further stated that as the action of the appellant is for declaratory reliefs which are equitable remedies, it is trite that it cannot be granted when there is inordinate delay (*Tan Poh Yee v. Tan Boon Thien & Other Appeals* [2017] 3 CLJ 569; [2017] 3 MLJ 244). As a result of that the appellant is not entitled to the equitable remedy of declaration. B

[48] With respect, we disagree with the learned trial judge that the appellant's action against the first and second respondents is time-barred under PAPA as in this case the act of the first and second respondents is *ultra vires* the NLC. The act of registering the title no. HSD 40222 in the name of Hoo Hwang Boon, instead of Hussein bin Nor who is the rightful owner according to the title no. QTR 5371 is *ultra vires* the NLC in particular the Fourteenth Schedule. In *Leo Leslie Armstrong (supra)* the respondent or its predecessor clearly has no authority or legal power to reduce the tenure of the appellant's landholding from perpetuity to leasehold. Therefore, by resorting to such an act (*ie*, to change the land tenure from freehold to leasehold) as a condition for approval of the appellant's application for subdivision of Lot 152 which was registered to the appellant into two lots – Lot A and Lot B, the respondent or its predecessor had exceeded its legal power. Therefore, the act was null and void. The issue, in that case, was whether the law of limitation is applicable where the decision being challenged was illegal or *ultra vires*. It was held that the act of public authority under s. 2(a) of the PAPA was only confined to *intra vires* act or acts done within the power of the public authority. In this case, it was found as a fact by the learned trial judge that there was no verification done with the copy of the manual QTR 5374 kept in the land office strong room by the official of the first respondent. They merely relying on the document furnished by the third and fourth respondents. If the officials of the first respondent performed their duty as provided under the law, this mishap would not have happened. C
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[49] In *Leo Leslie Armstrong (supra)* this court had accepted with the approval of the view expressed by the High Court in the case of *Ngo Ong Chung & Ors v. Pengarah Tanah Dan Galian Perak Darul Ridzuan* [2013] 1 LNS 146 that "It would also be incongruous and perhaps absurd to suggest that a person who is acting contrary to the law can at the same time be said to be acting in pursuance of any law or public duty". Further in para. 40 of the report, the court had said the following: H

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- A [40] It appears from the above authorities that the proposition that limitation does not apply to any act done outside a body's legal power or authority has been well accepted by the courts. In such a case, the court would not give effect to such act and would readily, if asked, set aside the said act.
- B [50] It is also pertinent to note that the appellant was seeking declaratory orders. Learned counsel for the appellant argued that limitation does not apply to a suit or action or proceeding for declaratory orders. In this regard, we refer to the Court of Appeal's decision in *Director Of Forests, Sarawak & Anor v. Balare Jabu & Ors And Another Appeal* [2012] 7 CLJ 685, where the court speaking through Abdul Wahab Patail JCA said as follows:
- C While limitation appears to be a complete answer to a suit, action or proceeding for remedy, it is no answer to a suit, action or proceeding for declaratory orders.
- D [51] Based on the above, in our considered view, the first and the second defendant cannot rely on PAPA to claim immunity from any legal proceedings with the plea of limitation under PAPA. Thus, the appellant's claims are not barred by limitation.
- E [52] Besides limitation, the respondents also pleaded laches. The law on laches is clear, in that there is no laches if there is no acquiescence. In para. 1478, vol. 16 *Halsbury's Laws of England*, 4th edn., it is said that the chief element in laches is acquiescence. In the case of *Alfred Templeton & Ors v. Mount Pleasure Corp Sdn Bhd* [1989] 1 CLJ 693; [1989] 1 CLJ (Rep) 219; Edgar Joseph Jr J (as he then was) said that "... In determining whether there has been such delay as to amount to laches the court considers whether there has been acquiescence on the plaintiff's part and any change of position that has occurred on the part of the defendant ..." The same view was expressed by the Supreme Court in *Ng Yee Fong & Anor v. EW Talalla* [1985] 1 LNS 146; [1986] 1 MLJ 25. In that case, the Supreme Court held:
- F ... The term "acquiescence" is used where a person refrains from seeking redress when there is brought to his notice a violation of his rights of which he did not know at the time, and in that sense acquiescence is an element in laches.
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- H [53] In the present case, PW2, Hussein's daughter was only aware in August 2015 upon inquiries at the land office after the tenant informed her of the letter from the third respondent's solicitor asking the tenant to vacate the property. On 7 October 2015, the appellant upon being notified by the beneficiary instructed a solicitor to write to the first and second respondents asking to rectify the title into Hussein's name. Subsequently, on 9 October 2015, the first respondent entered a registrar's caveat. On 17 June 2016, the appellant initiated proceedings by way of originating summons
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WA-24NCVC-982-06-2018 for possession of the property against the occupiers on the property. In September 2016, the appellant filed the suit in the present appeal against all five respondents. A

[54] From the above facts, it is clear that there was no delay which amounts to laches on the part of the appellant. B

Whether The First And The Second Respondents Are Protected Or Immune From Legal Proceedings Under S. 22 Of The NLC B

[55] Section 22 of the NLC provides the following:

22. Protection of officers C

No officer appointed under this Part shall be liable to be sued in any civil court for any act or matter done, or ordered to be done or omitted to be done, by him in good faith and in the intended exercise of any power, or performance of any duty, conferred or imposed on him by or under this Act. C

[56] His Lordship at para. [39] of his judgment agreed with the learned Federal Counsel that this case is a fit and proper case to apply for the protection as provided for under s. 22 of the NLC. With respect, we disagree. The protection accorded under s. 22 is only when the act is done in good faith. In our view, when the officials of the first and the second respondents failed to comply with the strict requirements of the Fourteenth Schedule of NLC, which resulted in the wrong person's name appearing in the title, is not an act done in good faith. The act of registering the title no. HSD 40222 in the name of Hoo Hwang Boon, instead of Hussein bin Nor who is the rightful owner according to the original title QTR 5371 is not an act done in good faith due to their failure to verify with the copy of the manual title kept in the strong room of the land office. DW1, En. Izham the official from the first and second respondents testified of the following: D

Peg ptf: Yang Arif, If I may, I will continue.

En. Izham, pada masa prosiding yang lepas saya tanya di manakah dokumen hak milik QTR 5371 asal di simpan, En. jawab di bilik kebal. adakah En. mempunyai akses kepada bilik kebal? G

DW2 : Akses ke bilik kebal boleh dimasuki dengan pegawai daripada bilik kebal itu sendiri...maksudnya saya bersama pegawai bilik kebal ... pegawai yang menjaga bilik kebal. Saya sendiri tidak boleh akses sendiri. Saya mesti bersama dengan pegawai yang menjaga bilik kebal. H

Peg ptf: Boleh minta kebenaran untuk akses?

DW2: Boleh minta kebenaran untuk akses. I

- A Peg ptf: Dalam proses permohonan hak milik gantian pada masa itu
En. Tidak merujuk kepada QTR 5371 inilah?
DW2: betul
DW2: saya tidak merujuk hanya berpandukan carian resmi sahaja
(emphasis added)
- B [57] The burden is on the first and second respondents to prove that they acted in good faith, and in our view, the burden has not been discharged. Therefore, the first and second respondents are not entitled for the protection of s. 22 of the NLC.
- C *Who Is The Legal And Lawful Owner Of The Property*
[58] In the case where the registration in the name of the late Hoo Hwang Boon is bad, the court has to determine whether the subsequent registration is valid. In this regard, it is plain that this is solely dependent upon whether the subsequent purchaser such as the fifth respondent enjoyed the protection of the proviso of s. 340(3) of the NLC as a *bona fide* purchaser for valuable consideration. Learned counsel for the fifth respondent submitted that based on the facts, the charge was validly created in favour of the fifth respondent, hence, the fifth respondent is a *bona fide* purchaser within the meaning of the proviso to s. 340 of the NLC. Section 340 of the NLC provides the following:
- E 340 Registration to confer indefeasible title or interest, except in certain circumstances
- F (1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.
- (2) The title or interest of any such person or body shall not be indefeasible:
- G (a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or
- (b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or
- H (c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.
- (3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-section (2):

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- (a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and
- (b) any interest subsequently granted there out shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:

Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.
(emphasis added)

[59] The fifth respondent's counsel referred to two recent decisions of the Federal Court. Counsel submitted that the subsequent purchaser is sheltered by the proviso to sub-s. (3) of s. 340 of the NLC to the extent that his title or interest is indefeasible so long as he is a *bona fide* purchaser for value. It was clear that the fifth respondent took the charge from the third respondent after the third respondent became the registered owner of the land. Applying the concept of deferred indefeasibility to the finding that the third respondent is the immediate owner and the fifth respondent is a subsequent purchaser, the inevitable result is that the fifth respondent's charge is protected by the proviso to sub-s. (3) of s. 340 of the NLC. Consequently, the fifth respondent's interest under the fifth respondent charge is indefeasible, valid and enforceable. Counsel referred to *Liputan Simfoni Sdn Bhd v. Pembangunan Orkid Desa Sdn Bhd* [2019] 1 CLJ 183; [2018] 1 LNS 1613 and *See Leong Chye & Anor v. United Overseas Bank Bhd & Another Appeal* [2018] 10 CLJ 1.

[60] The issue that arises in this appeal relates to the question of whether the law enunciated by the Federal Court in *Pushpaleela R Selvarajah & Anor v. Rajamani Meyappa Chettiar & Other Appeals* [2019] 3 CLJ 441 (*Rajamani*) or the two other Federal Court decisions cited by the fifth respondent namely *Liputan Simfoni Sdn Bhd (supra)* and *See Leong Chye & Anor (supra)* should apply to the facts of this particular case.

[61] Based on facts, *Liputan Simfoni (supra)* and *See Leong Chye (supra)* can be distinguished from the case in the present appeal. In these two cases, an imposter applied to the land authority for a replacement issue document of title alleging that it had lost the original document of title of the subject land. The original document of title was at all material times in the possession of the owner. The land authority was duped into issuing a replacement issue document of title. In the present case, there is no allegation of fraud or forgery. The facts leading to the issuance of the computerised issue document of title are not seriously in dispute.

[62] Based on the evidence and the clear statement by the Federal Court in *Rajamani* and in endorsing the view taken in *Shayo (M) Sdn Bhd; Uptown Properties Sdn Bhd* and *Overseas Realty Sdn Bhd*, in our view, the computerised

A issue document of title issued to the third respondent is invalid and it is null and void *ab initio* as it was issued in breach of statutory duty by the first and the second respondent.

[63] It was succinctly stated by the Federal Court that in the absence of fraud or forgery, the Federal Court decision in *Rajamani* (*supra*) applies. The title is void *ab initio* as it was issued by the Land Registry in blatant breach of its duty under the NLC by wrongfully registering the name of the late Hoo Hwang Boon in the title when the first and second respondents issued the computerised document of title. The first and the second respondents who are not complying with the requirement of the Fourteenth Schedule of the NLC have committed a breach of statutory duty.

[64] In *Rajamani*, the Federal Court also considered other cases namely; *Shayo (M) Sdn Bhd* (*supra*); *Uptown Properties Sdn Bhd* and *Overseas Realty Sdn Bhd* and held at paras. [111], [114], [115] and [117] of the report:

D [111] In our opinion, as correctly stated by the High Court in the present case, *the land title would be void ab initio, if and only if, the land registry had, in blatant breach of its duty under the NLC wrongfully registered any land in the register document of title and issued the replacement issue document of title in the name of a third party.*

E [114] First the case of *Shayo (M) Sdn Bhd v. Nurlieda by Sidek & Ors* (*supra*) where the issuance of *the impugned computerised issue document of title was without doubt due to a grave failure by the land authority to adhere to the strict mandatory provisions set out in the 14th Schedule of the NLC.* As such, the issuance of the computerised issue document of title was *ultra vires* and unlawful with the effect that any other instruments executed thereon would also be void and liable to be set aside at the instance of the plaintiff as the rightful registered proprietor.

F [115] Secondly, the case of *Uptown Properties Sdn Bhd v. Pentadbir Tanah Wilayah Persekutuan & Ors* (*supra*) where the land authority had mistakenly described the fourth defendant as the registered proprietor of the land and issuing it with a duplicate title. This act was held by the High Court to be unlawful and *ultra vires*. It was held that the issuance of a duplicate computerised title in the name of the fourth defendant when the land continued to be in the possession of the plaintiff coupled with the breach of the 14th Schedule of the NLC rendered the registration of the fourth defendant as proprietor void pursuant to s. 340(2)(c) of the NLC. Since the act of issuing the fourth defendant with a duplicate title was unlawful and *ultra vires*, any instrument executed by the fourth defendant in favour of the fifth and sixth defendants as vendors of the land would be void as being by way of an insufficient instrument pursuant to s. 340(2)(b) of the NLC, and thus liable to be set aside under the principle of deferred defeasibility.

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[117] *As can be seen from the above analysis of the cases, the land title would be void ab initio, if the land authority had in flagrant violation of its responsibility under the NLC* unlawfully registered any land in the register document of title and issued the replacement issue document of title in the name of a third party. We should note that it would be a different thing if the present case were such a situation. (emphasis added)

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[65] In our present case, as we have discussed earlier, there is no fraud or forgery involved but the computerised title was issued in breach of the statutory duty by the first and second respondents. Thus, based on the clear statement of law in *Rajamani* as stated by the Federal Court, in the foregoing paragraph, the third respondent's title is void *ab initio*.

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[66] Consequently, as the third respondent being a holder of a void title (inherited the void title from the late Hoo Hwang Boon), he shall have no reason to remain on the register of title as the owner and therefore his ownership should be expunged from the register of titles and the rightful owner, Hussein bin Nor, should be restored as the lawful owner. The charge registered in favour of the fifth respondent is also null and void as the third respondent's title is void *ab initio*. Therefore, the appellant's appeal is allowed with costs. The order of the High Court is set aside and ordered in terms of prayers (a) to (h) of para. 40 of the statement of claim.

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[67] On damages, as the claims for damages were not proven, we are not allowing the prayer for damages.

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[68] On the counterclaim by the third respondent, the learned trial judge had erred in holding that the third respondent was entitled for possession of the said property and the claims for loss of rental against the appellant while the third respondent has no good title to the said property. The third respondent's demand for vacant possession of the said property and loss of rental is unlawful and misconceived in view of his title being a nullity, hence, the counterclaim is dismissed. We allow costs of RM30,000 here and below against each set of respondents and are subject to allocator.

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